

COMPETITION COMMISSION OF INDIA

06 February, 2013

Case No. 80/2012

Name of the Parties

H.L.S. Asia Limited, New Delhi ... Informant

vs.

1. Schlumberger Asia Services Ltd. Gurgaon ... Opp.Party 1

2. Oil & Natural Gas Corp.Limited, New Delhi ... Opp.Party 2

Order under section 26(2) of the Act

This information has been filed by the informant against OP 1 and OP 2 with a prayer that the Competition Commission should order investigation into the alleged violations of section 4 of the Competition Act by OP 1 since OP-1 indulged into predatory pricing in respect of wireline logging and perforation services required for Oil & Natural Gas exploration. A prayer was also made that OP-2 should be directed to award part of the work to the informant on the basis of bid submitted by it and the Commission should also issue cease and desist order directing OP-1 not to indulge into anti competitive activities and impose penalty upon OP-1.

The brief facts relevant for the purpose of this Order are that informant and OP-1 and 9 other parties had submitted their bids in response to e-tender floated by OP-2. The financial bids were opened on 5th December, 2012. The allegation of informant is that OP-1 quoted unreasonably low rates for the standard services which were to be the basis for evaluation of tender while considering the financial bid of the parties by OP-2. OP-2 had issued a mega tender covering entire off-shore and on-shore areas of operation for a period of 3 years involving standard services, optional services and highly technical services. In order to grab almost the entire business of OP-2 in wireline logging and perforation services (of approx. 2,400 crores), OP-1 quoted prices of most

of the standard services ridiculously low and unreasonably increased prices of those services which were highly technical and were monopoly of OP-1 as these were not available with other companies. It is submitted that the tender was only to be evaluated on the basis of standard services and thus by quoting unreasonably low prices, OP-1 succeeded in ousting the informant from the contract with OP-2. It is stated that the prices quoted by OP-1 were approx. 40% lower than the internal estimates of OP-2 and 50% lower than the previous running contract rates.

After receipt of information, notices were served to the informant and opposite parties for preliminary conference so as to understand the relevant product market, geographic market and the bidding process. All the three parties were heard together.

It is an undisputed fact OP-2 had issued an e-tender in respect of standard services (common services), hi-tech services and optional services. It is also an undisputed fact that evaluation of tender was to be done on the basis of rates of standard services. Standard services formed a major part of the contract (above 70%). Hi-tech services formed only a minor part of the contract (value-wise). The informant's contention is that while issuing bid, ONGC had made an internal estimate in respect of values of the services. The bid given by OP-1 was on an average less by 40% than the estimated value of ONGC. It was less by 50% than the price of current running contract bid. It is submitted that in order to grab the contract, the prices were deliberately quoted low in standard items and to make up this, OP-1 gave a bid on an average of 64% higher in hi tech services where OP-1 was the sole bidder and 55% higher in optional services. It is submitted that OP-1 resorted to predatory pricing in bidding since tender was to be evaluated only on the basis of standard services segment, in order to oust other competitors. This as per informant was going to have an adverse effect on the competition in the market of wireline logging and perforation services required for onshore and offshore exploration of oil and gas in the long run. It is also submitted that by grabbing this contract, the share of OP-1 would increase from 70.8% of the work during the year 2012 to 100% for ONGC and 67.9% of work from other customers.

The crux of the allegation of the informant is that OP-1 indulged into predatory pricing. Predatory pricing essentially means quoting price below the cost in order to throw out the competitors from the market in the initial stage of competition with an eye on the later stage of the market to increase prices later so as to recoup losses made during the initial stage of the market. Normally predatory pricing is resorted to have sole control over the market power at that time. Thus in order to make out a case for predatory pricing, it is necessary for a party to show as to what was the cost of providing services to the party who resorted to predatory pricing and how the cost at which service was being provided to the customer was lower than the cost to the party.

It is essence of the competition that the firms/companies should compete and vie with each other for grabbing contracts by reducing prices. Giving rebates and adopting similar practices are an essential component of competitive process and law cannot condemn such practices. OP-1 has placed before the Commission charts showing that the prices for standard services have been falling since 2008 onwards and has also enumerated the factors accountable for falling prices. One of the factor enumerated was recession in the global market which started in October, 2008 and the other was discovery of shale gas in USA and development of technology to extract shale gas economically, which has considerably reduced dependence of US on conventional fuel and has brought pressure for reduction of price in normal exploration of offshore and onshore oil and gasses. OP-1 has shown that over a period of time, the prices of standard services have been falling from 2008 onwards and even the price quoted by the informant in the present tender had been lower than the price quoted by informant in the previous tender. The decrease in the price of different players has been up to 36%. The informant also reduced its quoted price by 21% from the estimates given by ONGC. Another factor stated by OP-2 is that on the last occasion there were only 4 bidding parties and this time there were 10 competing parties.

One common argument given by the opposite parties is that informant has not placed before the Commission material to show as to how it was a case of a predatory pricing since no data whatsoever has been placed by the informant before the

Commission even about the pricing of its own product or the product of its foreign collaborator who is also in the same market, what to talk of the pricing data of the product of OP-1.

A reading of the information and documents only shows that OP-1 had lowered its prices from the previous tender prices and the prices quoted by it was below the cost estimate of ONGC. The cost estimates given by a party seeking bids cannot be considered as the price of the party supplying the service. There will always be a divergence in the estimates owing to asymmetric information between the bid inviting party and the bidder. The bidder has far more information and hence this divergence occurs where ONGC estimates are higher than that of the OP-1. This cannot be construed as predatory pricing.

A party bidding for the provision of a service takes into account cost of his equipment, the life of equipment, the maintenance requirements of equipment, the operational cost and some reasonable returns on the capital invested. A party will bid at a price which is equal to the minimum of its' average variable cost to exploit scale economies. It will be not prudent for abiding firm to keep its capacity idle and bid at a price higher than its minimum average variable cost. Hence, the aspect of predatory pricing has to be looked from an appropriate cost benchmark.

As far as quoting of higher prices for optional and hi-tech items are concerned, there is a clause in the contract for negotiating the prices at a later stage.

In the present case no data has been given by the informant and the cost differences among different service providers depends upon the state of technology available with each of the service providers. Cost comparisons between service providers are required to bench mark the price quoted by the OP-1. Lowering of the bid prices by the competitors in one tender after the another is also indicative of competition and the impact of entry of new players.

OP-2 has brought to the notice of the Commission a letter written by the informant to OP-2 seeking contract on the same rates on which OP-1 had given its bids without saying that these rates were predatory or would result in loss to the informant. The Competition Act envisages better quality at lower prices as the essence of competition. This only shows that the informant lost the contract in a competitive bid and after it lost the contract, it raised the issue under Competition Act without there being any substance. The Commission is of the view that the Informant lost in a bidding process to an efficient competitor who had quoted a price that was not only lower than the ONGC estimates but also lower than previous year's price quote.

We find that no prima facie case was made out in this case. We are not going into the issue as to what was the relevant market in this case as the issue does not seem relevant. Secretary is directed to inform all concerned suitably in the matter.

Sd/-
(H.C. Gupta)
Member

Sd/-
(R.Prasad)
Member

Sd/-
(Geeta Gouri)
Member.

Sd/-
(Anurag Goel)
Member.

Sd/-
(M.L. Tayal)
Member.

Sd/-
(Justice S.N. Dhingra)
Member,

Sd/-
(Ashok Chawla)
Chairperson